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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

CASE NO. 5:22-cv-00949-KK-(SHKx)

*Assigned for All Purposes to:*  
*Hon. Kenly K. Kato – Courtroom 3*

**COUNTY DEFENDANTS’  
MEMORANDUM OF  
CONTENTIONS OF FACT AND  
LAW**

Date: May 15, 2025  
Time: 10:30 a.m.  
Dept.: 3

*Trial Date: June 2, 2025*

*Complaint filed: 06/07/2022*  
*FAC filed: 10/18/22*  
*SAC filed: 01/13/23*  
*TAC filed: 05/12/23*

L.C., a minor by and through her  
guardian *ad litem* Maria Cadena,  
individually and as successor-in-interest  
to Hector Puga; I.H., a minor by and  
through his guardian *ad litem* Jasmine  
Hernandez, individually and as  
successor-in-interest to Hector Puga;  
A.L., a minor by and through her  
guardian *ad litem* Lydia Lopez,  
individually and as successor-in-interest  
to Hector Puga; and ANTONIA  
SALAS UBALDO, individually,

Plaintiffs,

vs.

STATE OF CALIFORNIA; COUNTY  
OF SAN BERNARDINO; S.S.C., a  
nominal defendant; ISIAH KEE;  
MICHAEL BLACKWOOD;  
BERNARDO RUBALCAVA;  
ROBERT VACCARI; JAKE ADAMS;  
and DOES 6-10, inclusive,

Defendants.

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**I. CLAIMS AND DEFENSES (L.R. 16-4.1)<sup>1</sup>**

**(a) Claim 1: Fourth Amendment – Excessive Force (42 U.S.C. § 1983)**

Plaintiffs L.C., I.H., and A.L., as successors-in-interest to Decedent Hector Puga, County Defendants Sgt. Robert Vaccari and Deputy Jake Adams used excessive force when they shot Decedent.

**(b) Elements Required for Claim 1 – Fourth Amendment – Excessive Force (42 U.S.C. § 1983)**

Elements for an “Excessive Force” claim against County Defendants are:

1. Defendants Vaccari and Adams acted under color of state law;
2. Defendants Vaccari and Adams intentionally used force against Decedent;
3. The use of force was objectively unreasonable under all of the circumstances;
4. The use of force caused Decedent harm; and
5. Plaintiffs L.C., I.H., and A.L., are Decedent’s successors-in-interest.

See, Ninth Circuit Model Civil Jury Instructions Nos. 9.3, 9.25; see also, Graham v. Connor, 490 U.S. 386, 395 (1989); Tatum v. City & Cty. of San Francisco, 441 F.3d 1090, 1100 n.2 (9th Cir. 2006) (“[T]he decedent’s ‘successor in interest’ may prosecute [a section 1983] survival action if the person...satisfies the requirements of California law.”).

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<sup>1</sup> Plaintiffs stipulated to dismiss their First Claim for Fourth Amendment – Detention and Arrest against County Defendants, Third Claim for Fourth Amendment – Denial of Medical Care against County Defendants, and Fourth Claim – Substantive Due Process as to Vaccari only, and to strike allegations concerning medical care in other claims in the TAC ¶¶ 48, 107(d), 117, 118, and 119). (Dkt. 101). Therefore, this Memorandum only addresses the claims still at issue and not yet ruled on as County Defendants’ Motion for Summary Judgment is still under submission.

1 In determining whether either Defendant used excessive force in this case, the  
2 jury is to consider all of the circumstances known to the Defendants on the scene,  
3 including:

- 4 1. the nature of the crime or other circumstances known to the  
5 Defendants at the time force was applied;
- 6 2. whether Decedent posed an immediate threat to the safety of the  
7 Defendants or to others;
- 8 3. whether Decedent was actively resisting arrest or attempting to  
9 evade arrest by flight;
- 10 4. the amount of time the Defendants had to determine the type and  
11 amount of force that reasonably appeared necessary, and any changing  
12 circumstances during that period;
- 13 5. the relationship between the need for the use of force and the  
14 amount of force used;
- 15 6. the extent of Decedent's injury;
- 16 7. any effort made by Defendants to temper or to limit the amount of  
17 force;
- 18 8. the number of lives at risk and the parties' relative culpability;  
19 i.e., which party created the dangerous situation, and which party is more innocent;
- 20 9. whether it was practical for Defendants (or one of them) to give  
21 warning of the imminent use of force, and whether such warning was given;
- 22 10. whether the Defendants were responding to a domestic violence  
23 disturbance;
- 24 11. whether there was probable cause for a reasonable officer to  
25 believe that the suspect had committed a crime involving the infliction or threatened  
26 infliction of serious physical harm.

27 Claims of excessive force, deadly or not, are analyzed under the objective  
28

1 reasonableness standard of the Fourth Amendment as applied in Scott v. Harris, 550  
2 U.S. 372 (2007), Graham v. Connor, 490 U.S. 386 (1989), and Tennessee v.  
3 Garner, 471 U.S. 1 (1985). The Ninth Circuit has stated that “the Fourth  
4 Amendment does not require omniscience, and absolute certainty of harm need not  
5 precede an act of self-protection.” See, Wilkinson v. Torres, 610 F.3d 546, 553 (9th  
6 Cir. 2010) (internal quotation omitted). Accordingly, peace officers may reasonably  
7 use deadly force whenever they have “probable cause to believe that [a] suspect  
8 poses a threat of serious physical harm, either to the officer or to others.” Garner,  
9 supra, 471 U.S. at 11. It is the potential for injury which justifies the use of deadly  
10 force. See, Wilkinson, supra, 610 F.3d at 553; see, A. K. H ex rel. Landeros v. City  
11 of Tustin, 837 F.3d 1005, 1011 (9th Cir. 2016) (the “relevant question for the  
12 purposes of qualified immunity is whether [the officers] could reasonably have  
13 believed that [the suspect] posed” a significant threat of death or serious physical  
14 injury to the officers or others); Gonzalez v. City of Anaheim, 747 F.3d 789, 794  
15 (9th Cir. 2014) (“The key issue...is whether a reasonable jury would necessarily find  
16 that [an officer] perceived an immediate threat of death or serious physical injury at  
17 the time” the officer used deadly force); Barnes v. City of Pasadena, 508 Fed.Appx.  
18 663, 665 (9th Cir. 2013) (“Even if an issue of fact existed about the presence of a  
19 gun, the determinative issue was whether the officers reasonably believed [suspect]  
20 had a gun and posed an immediate threat to safety.”). “[T]he critical inquiry is what  
21 [the officer] perceived.” Wilkinson, supra, 610 F.3d at 551.

22 “[T]he ‘reasonableness’ of a particular use of force must be judged from the  
23 perspective of a reasonable officer on the scene, rather than with the 20/20 vision of  
24 hindsight.” Graham, supra, 490 U.S. at 396; see, Andrews v. City of Henderson, 35  
25 F.4th 710, 715 (9th Cir. 2022) (“All determinations of unreasonable force must  
26 embody allowance for the fact that police officers are often forced to make split-  
27 second judgments—in circumstances that are tense, uncertain, and rapidly  
28

1 evolving—about the amount of force that is necessary in a particular situation.”)  
2 (internal quotations omitted). Further, the “analysis is not static, and the  
3 reasonableness of force may change as the circumstances evolve.” Hyde v. City of  
4 Willcox, 23 F.4th 863, 870 (9th Cir. 2022). The Ninth Circuit has repeatedly  
5 emphasized that the most important factor is “whether the suspect posed an  
6 immediate threat to the safety of the officers or others.” See, S.B. v. County. of San  
7 Diego, 864 F.3d 1010, 1013 (9th Cir. 2017). An officer’s subjective intent or  
8 motivation is not relevant to the reasonableness inquiry. See, Graham, supra, 490  
9 U.S. at 397; see also, Shafer v. County of Santa Barbara, 868 F.3d 1110, 1116 (9th  
10 Cir. 2017).

11 The Ninth Circuit has also emphasized that an armed suspect represents the  
12 paradigm threat to officer safety. See, Smith v. City of Hemet, 394 F.3d 689, 704  
13 (9th Cir. 2005) (“[W]here a suspect threatens an officer with a weapon..., the officer  
14 is justified in using deadly force.”); George v. Morris, 736 F.3d 829, 838 (9th Cir.  
15 2013) (“If the person is armed—or reasonably suspected of being armed—a furtive  
16 movement, harrowing gesture, or serious verbal threat might create an immediate  
17 threat.”). Thus, “where the totality of the circumstances could cause a reasonable  
18 police officer to conclude that a suspect is reaching for a gun, the officer’s use of  
19 deadly force in self-defense is justified.” Baldrige v. City of Santa Rosa, 1999 WL  
20 66141, at \*7 (N.D. Cal. 1999); see, Reynolds v. County of San Diego, 858 F.Supp.  
21 1064, 1072 (S.D. Cal. 1994) (citing cases “support[ing] the general principle that an  
22 officer may reasonably use deadly force when he or she confronts an armed suspect  
23 in close proximity whose actions indicate an intent to attack.”).

24 Consistent with these principles, courts have repeatedly held that an  
25 actionable threat justifying the use of deadly force may take the form a suspect *even*  
26 *appearing* to reach for a *potential* gun. See, Cruz v. City of Anaheim, 765 F.3d  
27 1076, 1078 (9th Cir. 2014) (“It would be unquestionably reasonable for police to  
28

1 shoot a suspect in [Decedent's] position if he reaches for a gun in his waistband, or  
2 even if he reaches there for some other reason. Given [Decedent's] dangerous and  
3 erratic behavior up to that point, the police would doubtless be justified in  
4 responding to such a threatening gesture by opening fire.”); Estate of Moppin-  
5 Buckskin v. City of Oakland, 2010 WL 147976, at \*4 (N.D. Cal. 2010) (“The  
6 officers shot Mr. Moppin only after he failed to come toward them, as ordered,  
7 dropped his hands and then made a movement toward his waist area as though  
8 reaching for a weapon. All three officers who could see Mr. Moppin unequivocally  
9 thought that he was reaching for a gun and feared for their safety. Therefore, in this  
10 case, the test for objective reasonableness is met.”); Foster v. City of Fresno, 392  
11 F.Supp.2d 1140, 1157 (E.D. Cal. 2005) (where suspect “moved his arm down  
12 toward his waistband area...a reasonable officer in Officer Cornelison’s position  
13 would have believed that [the suspect] posed an immediate threat of serious harm.  
14 Officer Cornelison’s application of deadly force was thus objectively reasonable.”);  
15 accord Wilkinson, supra, 610 F.3d at 553 (“the Fourth Amendment does not require  
16 omniscience,’ and absolute certainty of harm need not precede an act of self-  
17 protection.”) (citation omitted); Terry v. Ohio, 392 U.S. 1, 23-24 (1968)  
18 (Constitution does not “require that police officers take unnecessary risks in the  
19 performance of their duties.”).

20 (c) **Key Evidence in Opposition to Claim 1 – Fourth Amendment –**  
21 **Excessive Force (42 U.S.C. § 1983)**

- 22 • Testimony by Officer and Deputy Defendants
- 23 • Testimony by Civilian Witnesses
- 24 • Evidence gathered including audio, videos, Puga’s gun, Puga’s fired  
25 cartridge casing, photographs, scene and defendant processing,  
26 Puga’s criminal records, autopsy materials and toxicology.
- 27 • Testimony by experts and non-retained experts, expert reports, and  
28

1 expert materials.

2 Decedent Hector Puga is the cause of his own injuries. Specifically,  
3 Decedent was wanted, in part, for shooting a gun at a complete stranger, led law  
4 enforcement in an hour-long pursuit through residential neighborhoods at speeds  
5 ranging from 50 – 90 mph, then orchestrated an hour-long standoff wherein law  
6 enforcement exhausted less lethal force and employed various negotiation tactics to  
7 no avail. Decedent then eventually exited his vehicle, only to lure defendants in,  
8 and then pulled a gun and fired at defendants; Defendants returned fire and yet  
9 Decedent, an armed felon, while firing, ran toward a residence. Despite being  
10 struck by gunfire, Decedent still armed with his gun on the ground, attempted again  
11 to use his gun while on the ground. But, Defendants were able to

12 To begin with, Sgt. Vaccari never used deadly force and never fired a lethal  
13 weapon. And, the undisputed evidence establishes that at the time Deputy Adams  
14 fired his weapon, Puga, who was wearing baggy jeans, suddenly dropped his hands  
15 where the officers could not see, despite commands to keep his hands up, and reached  
16 towards his waistband, pulling out a firearm. Case law is clear that when Decedent  
17 reached for his waistband and withdrew a gun, Defendants were justified in shooting.

18 Further, the evidence established Puga was wanted for being involved in a  
19 shooting and according to the video evidence, when the shooting occurred, his hand  
20 went to his waistband. All law enforcement officers in a position to see this have  
21 testified that Puga drew a firearm from his waistband. The shooting began, and within  
22 a moment, Puga turned to run, straight towards residences. A witness video from Erin  
23 Mangerino clearly shows Puga's hand dropped a second before the shooting. An  
24 additional video from CHP dash cam shows Puga running with a shiny object in his  
25 hand. And these videos also show Puga was running straight towards residences,  
26 specifically Erin Mangerino and her family. Under these circumstances Deputy  
27 Adams was not required to wait until Puga discharged his firearm to react.

28

1 Simply put, Puga reached for his waistband and drew a firearm at officers who  
2 then used deadly force. Following the incident, Puga's firearm was found underneath  
3 his body, not in a pocket or a holster, supporting exactly what the law enforcement  
4 officers testified to – Puga pulled a gun and ran with it in his hand. To dispute facts  
5 that Puga had a firearm out, he drew it, etc. is ignoring the obvious physical evidence  
6 of the gun that was found.

7 Additionally, although Deputy Adams may have fired when Puga was turning  
8 to run and bullets made contact with Puga, one to the front of his leg and the other to  
9 his buttocks, Plaintiffs have provided no evidence that Deputy Adams continued  
10 firing on Puga after he was on the ground or that Puga was no longer a threat on the  
11 ground with the gun still underneath him

12 As to Vaccari, the undisputed facts are that Vaccari never discharged his  
13 firearm. Vaccari deployed a single 40mm less lethal sponge round which there is no  
14 evidence to support it even struck Puga; rather, our expert has opined that based on  
15 the evidence, it more than likely hit the vehicle, and bounced off the car, landing on  
16 the street.

17 As to Vaccari's use of pepper balls, Plaintiffs' excessive force claim falls short.  
18 It has been held that officers are entitled to qualified immunity for use of chemical  
19 agents to extract a barricaded suspect potentially armed with a lethal weapon. And  
20 similarly, this was the exact situation presented to Vaccari – a suspect was refusing to  
21 leave his vehicle who was involved in a shooting earlier and was believed to still be  
22 armed. Nothing prohibited Vaccari from using less lethal pepper balls under these  
23 circumstances.

24 As to Vaccari's taser, the taser was used when Puga had fallen with his hands  
25 and gun concealed under him and he was still moving. Again, Vaccari used less lethal  
26 despite Mr. Puga having just pulled a gun on officers and because Puga's hands were  
27 not visible nor was the gun underneath him, it was reasonable to believe Puga was  
28

1 still armed, which he in fact was. Given Puga's already brazen conduct of shooting  
2 at a stranger on the freeway then opening fire on law enforcement, it was reasonable  
3 for Vaccari to believe Puga still presented a threat despite being on the ground. Was  
4 Puga playing possum only to turn over and shoot the officers? The law does not  
5 require Defendants to wait to see what action the Puga would take next. Further,  
6 Puga's gun was found with a round in the chamber and a fired cartridge casing next  
7 to the gun under him.

8 The Civilian Witnesses Support Puga Pointed a Gun

9 Aside from all five law enforcement officers who were on scene and the closest  
10 to Puga, a number of civilian witnesses also reported that Puga had a gun and fired at  
11 officers. For example, witness Edward Mangerino, who was watching and recording  
12 on his cell phone from his home on the northwest corner (where Puga eventually ran  
13 to), told detectives and reiterated at deposition, that while he could not see a "gun,"  
14 he is familiar with guns, and observed Puga extend his arm, with his hand wrapped  
15 around an object, and then saw smoke emanate from his hand, believing Puga to  
16 have had a gun and fired at officers.

17 And, although neighbor Tammy Goodson did not mention Puga with a gun  
18 during her interview with detectives, at deposition she testified that Puga grabbed  
19 for something from his waistband that appeared to be a gun, and he caused the  
20 entire shooting incident.

21 Also, Annabelle Botten (a Plaintiff in the related *Botten* case), was a neighbor  
22 in the northeast home. When she called 911, she reported that a man had pulled a  
23 gun on officers and that he shot at officers. In her interview with detectives, Botten  
24 described that just prior to the shooting, she saw Puga lower his right hand toward  
25 the front of his waist and raise a black handgun, then he shot once at the CHP  
26 officers. Botten stated she knew Puga fired because she saw a muzzle flash from  
27 Puga's gun; then CHP officers shot back.

1 Finally, another neighbor, Arthur Miranda, advised 911 after he heard shots  
2 fired, that when he looked out his slider, he saw someone running with a gun.

3 Thus, at least four additional civilian witnesses, in addition to the five law  
4 enforcement officers, as well as the available audio and video evidence, all support  
5 Puga was armed with a gun and pulled a gun causing the lethal force encounter.

6 Physical Evidence Corroborates Puga Fired his Gun

7 As to the physical evidence, it is undisputed that a gun was found under Puga  
8 as well as a fired cartridge casing (“FCC”) next to the gun. An examination of the  
9 pistol revealed Puga’s gun to be a Personally Manufactured Firearm, “PMF,” often  
10 referred to as a “Ghost gun.” Again, there is no dispute that the gun belongs to Puga.  
11 Not only was it found underneath him, but ammunition matching the gun was found  
12 inside Puga’s pants’ pocket, and FCCs fired from the gun were also found in the cup  
13 holder of Puga’s vehicle.

14 Further, Defense experts report, and it is undisputed, that the FCC located next  
15 to Puga’s gun also came from Puga’s gun. And the existence of the FCC on the  
16 ground, supports that Puga either fired while on the ground or, based on additional  
17 evidence, Puga’s gun jammed earlier while he was at the front of his vehicle firing at  
18 law enforcement, but that his ghost gun could not fire due to a malfunction and  
19 therefore the FCC under Puga, supports that Puga was either firing or attempting to  
20 make the gun operational to fire, while on the ground; all evidence that Puga was still  
21 a threat even on the ground, again justifying defendants’ use of force including  
22 Vaccari’s taser deployments.

23 There is even further evidence of Puga using his gun. A forensic exam of the  
24 gun revealed a live round in the chamber of the gun. Importantly, the crime lab  
25 identified a “squib round” in Puga’s gun. A squib round is a firearm malfunction in  
26 which a fired projectile does not have enough force behind it to exit the barrel and  
27 thus becomes stuck. This is a critical piece of evidence. Per our expert, again  
28

1 undisputed by Plaintiffs, the discovery of the squib round lodged in the barrel of  
2 Puga's gun establishes an unsuccessful attempt to fire the gun. And further, experts  
3 will testify that a squib discharge is very likely to leave the fired cartridge case in the  
4 chamber or jammed in the pistol.

5 Therefore, per the ballistics expert, the discovery of the squib round supports  
6 the testimony of the officers, deputies, and civilian witnesses Mangerino, Goodson,  
7 Botten, and Miranda, that Puga was firing his gun at the front of his vehicle and/or  
8 while running. The expert will explain the following sequence of events: Puga fired  
9 his gun at officers near the front of his vehicle, the gun jammed, meaning, although  
10 Puga fired his gun, no bullets ejected, and the cartridge casing was also not able to  
11 eject at the time. It was only after Puga was trying to make his gun operational, while  
12 running and then on the ground, that Puga was able to vigorously retract the slide of  
13 the gun, a purposeful act, to remove and expel the cartridge casing. Thus, the physical  
14 evidence of the gun, with a live round chambered, a squib round lodged in the barrel,  
15 and the FCC found under Puga, all support that Puga fired his weapon. And despite  
16 having fallen to the ground with multiple gunshot wounds, Puga was still attempting  
17 to fire his gun. Simply Puga presented a persistent and lethal threat from beginning  
18 to end. And, thus neither Adams lethal force nor Vaccari's less-lethal force were  
19 excessive.

20 **(a) Claim 2: Fourteenth Amendment – Substantive Due Process as to**  
21 **Deputy Jake Adams (42 U.S.C. § 1983)**

22 Plaintiffs Ubaldo, L.C., I.H., and A.L., as individuals, claim County Defendant  
23 Deputy Jake Adams violated their respective relationships with Decedent.

24 **(b) Elements Required for Claim 2 – Fourteenth Amendment –**  
25 **Substantive Due Process as to Deputy Jake Adams**  
26 **(42 U.S.C. § 1983)**

27 Under the due process clause of the Fourteenth Amendment, liability is found  
28

1 only where the plaintiff can show that police conduct “shocks the conscience.”  
2 *County of Sacramento v. Lewis*, 523 U.S. 833, 844 (1998). For the aforementioned  
3 reasons, Plaintiffs have no evidence Deputy Adams’ use of force was not objectively  
4 reasonable, let alone conscience shocking. *See, Moreland v. Las Vegas Metro. Police*  
5 *Dep’t.*, 159 F.3d 365, 371 (9th Cir. 1998) (“[I]f the district court correctly determined  
6 [the officer]’s actions were objectively reasonable, it follows that his conduct did not  
7 offend the more stringent standard applicable to substantive due process claims.”).

8 “[W]here a law enforcement officer makes a snap judgment because of an  
9 escalating situation, his conduct may only be found to shock the conscience if he acts  
10 with a **purpose to harm** unrelated to legitimate law enforcement objectives.” *A.K.H.*  
11 *by and through Landeros v. City of Tustin*, 2014 WL 12672480, at \*6–7 (C.D. Cal.  
12 2014). “Where, [ ] the officers did not have time to deliberate, a use of force shocks  
13 the conscience only if the officers had a “purpose to harm” the decedent for reasons  
14 unrelated to legitimate law enforcement objectives.” *Gonzalez v. City of Anaheim*,  
15 747 F.3d 789, 797 (9th Cir. 2014). “Legitimate law enforcement objectives [include]  
16 arrest, self-defense, or the defense of others.” *Fewell v. California*, 2017 WL  
17 6043080, at \*6 (C.D. Cal. 2017) (internal quotation omitted).

18 “The ‘shocks the conscience’ standard is applied to evaluate whether the  
19 actions of law enforcement during situations that require quick decision-making—  
20 such as a traffic stop—were driven by a purpose to harm that is unrelated to  
21 legitimate law enforcement objectives. This standard is particularly stringent and  
22 requires showing that the officers' actions were directed intentionally to cause harm,  
23 rather than merely acting negligently or unreasonably.” *Peck v. Montoya*, 51 F.4th  
24 877, 893 (9th Cir. 2022) (internal citations omitted). “We apply the purpose-to-  
25 harm standard when officials were required to make “repeated split-second  
26 decisions” about how best to respond to a risk, such as during a high-speed car chase  
27 or when confronting a threatening, armed suspect.” *Peck v. Montoya*, 51 F.4th 877,  
28

1 893 (9th Cir. 2022) citing Porter, 546 F.3d at 1139 (citation omitted); *Hayes v. v.*  
2 *Co. of San Diego*, 736 F.3d 1223, 1230 (9th Cir. 2013).

3 (c) **Key Evidence in Opposition to Claim 2 – Fourteenth Amendment –**  
4 **Substantive Due Process as to Deputy Jake Adams**  
5 **(42 U.S.C. § 1983)**

- 6 • Testimony by Officer and Deputy Defendants  
7 • Testimony by Civilian Witnesses  
8 • Evidence gathered including audio, videos, Puga’s gun, Puga’s fired  
9 cartridge casing, photographs, scene and defendant processing,  
10 Puga’s criminal records, autopsy materials and toxicology.  
11 • Testimony by experts and non-retained experts, expert reports, and  
12 expert materials.  
13 • Testimony by Plaintiffs, Puga’s sisters, and minor Plaintiffs’ GALs.

14 To begin, Deputy Adams was not the cause of Decedent’s death, based on the  
15 autopsy protocol, the Coroner’s testimony and ballistics expert report and testimony.  
16 Therefore, Deputy Adams did not interfere with Plaintiffs’ relationships. More  
17 specifically, the undisputed evidence is that the fatal shot was caused by  
18 ammunition only utilized by Defendants Kee and Blackwood, an AR-rifle not the  
19 9mm weapon Deputy Adams fired. Stated otherwise, the undisputed evidence from  
20 the coroner, autopsy, and ballistics expert, firmly establishes that Deputy Adams  
21 only struck Puga twice, with non-fatal shots, one to the front of his leg and the other  
22 to his buttocks which the ballistics expert described as the bullet first ricocheting off  
23 the ground and then impacting Puga. Accordingly, Deputy Adams cannot be liable  
24 to the Puga family members for depriving them of their relationship as he quite  
25 plainly did not cause Puga’s death.

26 Further, Deputy Adams’ actions were entirely related to the legitimate law  
27 enforcement objective of apprehending Decedent, a suspect in a freeway shooting  
28

1 and then a fleeing felon at the time force was used based on the above described  
2 evidence.

3 Finally, as to Plaintiff L.C. the undisputed evidence is that she did not have a  
4 relationship with her father that could be subject to interference based on the written  
5 discovery and deposition testimony. Specifically, Plaintiff L.C.'s mother testified  
6 that to her knowledge Puga never saw L.C. since L.C. was born in 2013 up to  
7 Puga's death. And, L.C.'s mother took deliberate steps to never have Puga meet  
8 L.C. because of her concern for Puga's drinking and abusive behavior, even going  
9 so far as to not have Puga listed on L.C.'s birth certificate, for which Puga did not  
10 rebut. She further testified that there were no future plans for Puga to become  
11 involved in L.C.'s life. Thus the evidence supports Plaintiff L.C. is unable to  
12 maintain her claim.

13 **(a) Claim 3: Battery (Survival and Wrongful Death)**

14 Plaintiffs Ubaldo, L.C., I.H., and A.L., as individuals, bring forth a battery  
15 (survival and wrongful death) claim against all County Defendants alleging  
16 unreasonable and excessive force against Decedent.

17 **(b) Elements Required for Claim 3 – Battery (Survival and Wrongful**  
18 **Death)**

19 Elements of Plaintiffs' "battery" claim with respect to non-deadly force are:

- 20 1. Defendants intentionally touched Decedent;
- 21 2. Defendants used unreasonable force on Decedent;
- 22 3. Decedent did not consent to the use of that force;
- 23 4. Decedent was harmed; and
- 24 5. Defendants use of unreasonable force was a substantial factor in  
25 causing Decedent's harm;
- 26 6. With respect to Decedent's survivorship claim, Plaintiffs L.C., I.H.,  
27 and A.L. are Decedent's successors-in-interest. See, CACI 1305A, "Battery by a  
28

1 Peace Officer (Nondeadly Force).”

2 The same Graham factors apply to the reasonableness of the use of force as  
3 under a Fourth Amendment claim. See, CACI 1305A; Hernandez v. City of  
4 Pomona, 46 Cal. 4th. 501, 514 (2009). As with Fourth Amendment claims, a claim  
5 for battery is a personal right that may not be vicariously asserted. See, Code of  
6 Civil Procedure § 377.32. While Plaintiffs may “step into Decedent’s shoes” to  
7 prosecute this claim on his behalf, they have no standing to do so for themselves  
8 because Defendants did not commit a battery against any Plaintiff. Instead, it has  
9 been established that “wrongful death” damages compensate a plaintiff for his or her  
10 own independent pecuniary injury suffered by loss of the decedent, and are separate  
11 and distinct from any damages recoverable by decedent had he or she survived. See,  
12 Code of Civil Procedure §§ 377.22, 377.60; Earley v. Pacific Elec. Ry. Co., 176 Cal.  
13 79, 81 (1917); Justus v. Atchison, 19 Cal.3d 564, 572, 573 (1977).

14 The elements of Plaintiffs’ “battery” claim with respect to deadly force are:

- 15 1. That Defendant Adams intentionally touched or caused Decedent  
16 to be touched;
- 17 2. That Defendant Adams used deadly force on Decedent;
- 18 3. That Defendant Adams use of deadly force was not necessary to  
19 defend human life;
- 20 4. That Decedent was killed;
- 21 5. That Defendant Adam’s use of deadly force was a substantial  
22 factor in causing Decedent’s death; and
- 23 6. With respect to Decedent’s survivorship claim, Plaintiffs L.C.,  
24 I.H., and A.L. are Decedent’s successors-in-interest.

25 Defendant Adams’ use of deadly force was necessary to defend human life if  
26 a reasonable officer in the same situation would have believed, based on the totality  
27 of the circumstances known to or perceived by Deputy Adams at the time, that  
28

1 deadly force was necessary to defend against an imminent threat of death or serious  
2 bodily harm to Deputy Adams, the other law enforcement Defendants, and/or the  
3 public. See, CACI 1305B “Battery by Peace Officer (Deadly Force) -- Essential  
4 Factual Elements.”

5 Notably, should the Court determine there was no excessive force as a matter  
6 of law, Plaintiffs state law claims also must fail. *Moore v. City of Berkley*, 2016 WL  
7 6024530, at \*7 (N.D. Cal. 2016) (“In California, state law claims for wrongful death  
8 and battery at the hands of the police rise and fall with federal Section 1983 claims.  
9 [Citations]. *Sorgen v. City & County of San Francisco*, 2006 WL 2583683, at \*9  
10 (N.D. Cal. 2006) (“[T]he law governing Plaintiff’s state law claim for assault and  
11 battery/excessive force is the same as that used to analyze Plaintiff’s [federal] claim  
12 for excessive force . . . Accordingly, Plaintiffs’ claim of battery under state law fails  
13 for the same reasons [as his federal claim]....”).

14 **(c) Key Evidence in Opposition to Claim 3 – Battery (Survival and**  
15 **Wrongful Death)**

- 16 • Testimony by Officer and Deputy Defendants
- 17 • Testimony by Civilian Witnesses
- 18 • Evidence gathered including audio, videos, Puga’s gun, Puga’s fired  
19 cartridge casing, photographs, scene and defendant processing,  
20 Puga’s criminal records, autopsy materials and toxicology.
- 21 • Testimony by experts and non-retained experts, expert reports, and  
22 expert materials.
- 23 • Testimony by Plaintiffs, Puga’s sisters, and minor Plaintiffs’ GALs.

24 **(a) Claim 4: Negligence (Survival and Wrongful Death)**

25 Plaintiffs Ubaldo, L.C., I.H., and A.L., as individuals, bring forth a negligence  
26 (survival and wrongful death) claim against all County Defendants alleging  
27 Decedent died as a result of defendants “negligent conduct.” And, further claim  
28

Defendant County is responsible for the actions of the individual County defendants pursuant to the doctrine of *respondeat superior* under the California Government Code.

**(b) Elements Required for Claim 4 – Negligence (Survival and Wrongful Death)**

Elements of Plaintiffs’ negligence claim with respect to non-deadly force are:

1. That Defendants used force to arrest and overcome resistance by Decedent;
2. That the amount of force used by Defendants was unreasonable;
3. That Decedent was harmed; and
4. That Defendants’ use of unreasonable force was a substantial factor in causing Decedent’s harm.

See, CACI 440.

The elements of Plaintiffs’ negligence claim with respect to deadly force are:

1. That Defendant Adams was a peace officer;
2. That Defendant Adams used deadly force on Decedent;
3. That Defendant Adam’s use of deadly force was not necessary to defend human life;
4. That Decedent was killed; and
5. That Defendant Adam’s use of deadly force was a substantial factor in causing Decedent’s death.

See, CACI 441.

Plaintiffs contend that Defendants are liable for negligence based on alleged tactical mistakes prior to the shooting, citing California Government Code section 815.2(a).

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1 Under California law:

2 [W]here the preshooting conduct did not cause the plaintiff any injury  
3 independent of the injury resulting from the shooting, the reasonableness  
4 of the officers' preshooting conduct should not be considered in isolation.  
5 Rather, it should be considered in relation to the question whether the  
6 officers' ultimate use of deadly force was reasonable.

7 Hayes v. County of San Diego, 57 Cal. 4th 622, 632 (2013).

8 State law "wrongful death" claim is predicated on Defendants' use of force.  
9 "[C]laims of excessive force under California law are analyzed under the same  
10 standard of objective reasonableness used in Fourth Amendment claims."

11 Donaldson v. United States, 2018 WL 1089986, at \*13 (S.D. Cal. 2018).

12 Accordingly, a jury finding of reasonableness of force used dispenses with this  
13 concomitant state law claim altogether. Moore v. City of Berkley, 2016 WL  
14 6024530, at \*7 (N.D. Cal. 2016) ("In California, state law claims for wrongful  
15 death...at the hands of the police rise and fall with federal Section 1983 claims.  
16 [Citations].... So because the arrest and use of force did not violate Moore's Fourth  
17 Amendment rights, [the state law] claims fall away."); Watkins v. City of San Jose,  
18 2017 WL 1739159, at \*20 (N.D. Cal., 2017) ("The California Court of Appeal has  
19 held that a determination that an officer's use of deadly force is objectively  
20 reasonable under § 1983 precludes negligence, assault, and battery claims.") (citing  
21 Brown v. Ransweiler, 171 Cal.App.4th 516, 533 (2009)); Sorgen v. City & County  
22 of San Francisco, 2006 WL 2583683, at \*9 (N.D. Cal. 2006) ("[T]he law governing  
23 Plaintiff's state law claim for assault and battery/excessive force is the same as that  
24 used to analyze Plaintiff's [federal] claim for excessive force.... Accordingly,  
25 Plaintiff's claim of assault and battery/excessive force under state law fails for the  
26 same reasons [as his federal claim]....").

27 Plaintiff also contends that Defendants are liable for negligence based on  
28 alleged tactical mistakes prior to the shooting. Under California law 815.2(a).

[W]here the preshooting conduct did not cause the plaintiff any injury independent of the injury resulting from the shooting, the reasonableness of the officers' preshooting conduct should not be considered in isolation. Rather, it should be considered in relation to the question whether the officers' ultimate use of deadly force was reasonable.

Hayes v. County of San Diego, 57 Cal. 4th 622, 632 (2013).

**(c) Key Evidence in Opposition to Claim 4 – Negligence (Survival and Wrongful Death)**

- Testimony by Officer and Deputy Defendants
- Testimony by Civilian Witnesses
- Evidence gathered including audio, videos, Puga's gun, Puga's fired cartridge casing, photographs, scene and defendant processing, Puga's criminal records, autopsy materials and toxicology.
- Testimony by experts and non-retained experts, expert reports, and expert materials.
- Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

**(a) Claim 5: Cal. Civil Code § 52.1**

Plaintiffs L.C., I.H., and A.L., as successors-in-interest, bring forth a Violation of Bane Act pursuant to Cal. Civil Code § 52.1 against all County Defendants alleging interference with Decedent's civil rights by intentionally committing and attempting to commit acts of violence against Decedent or acted in reckless disregard by shooting Decedent without justification or excuse. And, further claim Defendant County is vicariously liable for the actions of County Defendants Sgt. Vaccari and Deputy Adams.

**(b) Elements Required for Claim 5 – Cal. Civil Code § 52.1**

The elements of a Bane Act claim are:

1. Defendants acted violently against Decedent to prevent him from exercising his right to be free from unreasonable seizure;

2. Decedent was unreasonably seized under the Fourth Amendment, i.e., the use of force was objectively unreasonable under all of the circumstances;

3. Decedent was harmed;

4. Defendants' conduct was a substantial factor in causing Decedent's harm;

5. Plaintiffs L.C., I.H., and A.L., are Decedent's successors-in-interest.

See CACI 3066.

Defendants must have intentionally "acted to prevent" Decedent from exercising some right. See, CACI 3066. In that connection, Plaintiffs must prove not only a constitutional violation, but also "a specific intent to violate [Decedent's] right to freedom from unreasonable seizure." Reese v. Cty. of Sacramento, 888 F.3d 1030, 1043 (9th Cir. 2018) (quoting Cornell v. City and County of San Francisco, 17 Cal.App.4th 766, 801-802 (2017)); see also, Sandoval v. Cty. of Sonoma, 912 F.3d 509, 519-520 (9th Cir. 2018). A mere intention to use force that a jury may ultimately find unreasonable is insufficient. Id. at 1045 (quoting United States v. Reese, 2 F.3d 870, 885 (9th Cir. 1993)). Rather, Plaintiffs must prove that the Defendants "intended not only the force, but its unreasonableness, its character as 'more than necessary under the circumstances.'" Id.

**(c) Key Evidence in Opposition to Claim 5 – Cal. Civil Code § 52.1**

- Testimony by Officer and Deputy Defendants
- Testimony by Civilian Witnesses
- Evidence gathered including audio, videos, Puga's gun, Puga's fired cartridge casing, photographs, scene and defendant processing, Puga's criminal records, autopsy materials and toxicology.
- Testimony by experts and non-retained experts, expert reports, and expert materials.
- Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

1           **(d) Affirmative Defense 1:** Defendants Vaccari and Adams are protected  
2           by the doctrine of “qualified immunity.”

3           **(e) Elements Required for Affirmative Defense 1**

4           Qualified immunity is a legal defense for the Court to decide when  
5           raised by a non-suit or post-verdict motion. See, Ortiz v. Jordan, 562 U.S. 180, 191  
6           (2011) (holding qualified immunity must be raised by a Rule 50 motion following  
7           trial where disputed facts precluded resolution on summary judgment); see also,  
8           Torres v. City of Los Angeles, 548 F.3d 1197, 1211 fn. 9 (9th Cir. 2008)  
9           (identifying qualified immunity as a defense once a case proceeds to trial).

10           The elements are:

11           1. Defendants Vaccari and Adams did not violate Decedent’s  
12           constitutional rights, or;

13           2. The law was not clearly established such that Defendants  
14           Vaccari and Adams were not on notice that acting as they did in the factual  
15           circumstances presented to them was plainly unlawful.

16           To “defeat...officials’ defense of qualified immunity,” it is the plaintiff’s  
17           burden to “show, ‘first, [that he] suffered a deprivation of a constitutional or  
18           statutory right; and second [that such] right was clearly established at the time of the  
19           alleged misconduct.’” Hamby v. Hammond, 821 F.3d 1085, 1090 (9th Cir. 2016)  
20           (internal citation omitted); see, Ault v. Speicher, 634 F.3d 942, 945 (7th Cir. 2011)  
21           (“‘[I]n a § 1983 claim, the plaintiff bears the burden of proof on the constitutional  
22           deprivation that underlies the claim....’”); Shafer v. County of Santa Barbara, 868  
23           F.3d 1110, 1118 (9th Cir. 2017) (“It is the plaintiff who bears the burden of showing  
24           that the rights allegedly violated were clearly established.”).

25           In recent years, the Supreme Court has devoted substantial time and effort to  
26           qualified immunity issues—with a particular emphasis on the “clearly established  
27           law” aspect of the doctrine. See, White v. Pauly, 137 S.Ct. 548, 551 (2017) (the  
28

1 Court “has issued a number of opinions reversing federal courts in qualified  
2 immunity cases” over “the last five years.”). In this connection, the Supreme Court  
3 “[has] repeatedly told [plaintiffs and] courts...not to define clearly established law  
4 at a high level of generality.” Ashcroft v. al-Kidd, 563 U.S. 731, 742 (2011).  
5 Instead, the authorities cited “must be particularized to the facts of the case.” White,  
6 supra, 137 S.Ct. 548 at 552; District of Columbia v. Wesby, 138 S.Ct. 577, 590  
7 (2018) (“The ‘clearly established’ standard...requires that the legal principle clearly  
8 prohibit the officer’s conduct in the particular circumstances before him.”); Sharp v.  
9 County of Orange, 871 F.3d 901, 911 (9th Cir. 2017) (qualified immunity granted  
10 where “[o]ur case differs materially” from the facts in precedent cited by plaintiff.);  
11 S.B. v. County of San Diego, 864 F.3d 1010, 1015 (9th Cir. 2017) (“We hear the  
12 Supreme Court loud and clear. Before a court can impose liability on Moses, we  
13 must identify precedent as of August 24, 2013—the night of the shooting—that put  
14 Moses on clear notice that using deadly force in these particular circumstances  
15 would be excessive.”).

16 “This requires a high ‘degree of specificity’” Wesby, supra, 138 S.Ct. at 590,  
17 inasmuch as qualified immunity is a “fact-specific, highly contextualized” inquiry.  
18 Hamby, supra, 821 F.3d at 1092; Kisela v. Hughes, 138 S.Ct. 1148, 1153 (2018)  
19 (public employees “are entitled to qualified immunity unless existing precedent  
20 ‘squarely governs’ the specific facts at issue”). “Such specificity is especially  
21 important in the Fourth Amendment context, where the Court has recognized that  
22 ‘[i]t is sometimes difficult for an officer to determine how the relevant legal doctrine  
23 [ ] will apply to the factual situation the officer confronts.’” Mullenix v. Luna, 136  
24 S. Ct. 305, 308 (2015) (quoting Saucier v. Katz, 533 U.S. 194, 205 (2001)).  
25 “Plaintiffs must point to prior case law that articulates a constitutional rule specific  
26 enough to alert *these* [public employees] *in this case* that *their particular conduct*  
27 was unlawful.” Sharp, supra, 871 F.3d at 911 (italics original). As the Ninth Circuit  
28

1 has explained, “state officials are entitled to qualified immunity so long as ‘none of  
2 our precedents squarely governs the facts’” they confronted. Hamby, supra, 821  
3 F.3d at 1091 (citations omitted); see, Rivas-Villegas v. Cortesluna, 142 S.Ct. 4, 8  
4 (2021) (reversing the denial of qualified immunity based on the plaintiff and the  
5 Circuit Court’s failure to cite “any Supreme Court case that addresses facts like the  
6 ones at issue....”); City of Tahlequah, Oklahoma v. Bond, 142 S.Ct. 9 (2021)  
7 (finding the Tenth Circuit “contravened [ ] settled principles” when “none of the  
8 decisions relied upon by the Court of Appeals” to deny qualified immunity to law  
9 enforcement officers who shot and killed a suspect “[came] close to establishing that  
10 the officers’ conduct was unlawful.”).

11 **(f) Key Evidence in Support of Affirmative Defense 1**

12 Defendants’ evidence in support of their affirmative defense includes:

- 13 • Testimony by Officer and Deputy Defendants
- 14 • Testimony by Civilian Witnesses
- 15 • Evidence gathered including audio, videos, Puga’s gun, Puga’s fired  
16 cartridge casing, photographs, scene and defendant processing,  
17 Puga’s criminal records, autopsy materials and toxicology.
- 18 • Testimony by experts and non-retained experts, expert reports, and  
19 expert materials.
- 20 • Testimony by Plaintiffs, Puga’s sisters, and minor Plaintiffs’ GALs.

21 **(d) Affirmative Defense 2: Self-defense and defense of others against the**  
22 state law negligence, battery, and Bane Act claims.

23 **(e) Elements Required for Affirmative Defense 2**

24 The elements of self-defense/ defense of others are:

- 25 1. Defendants reasonably believed decedent was going to harm  
26 them; and
- 27 2. Defendants only used the amount of force necessary to protect  
28

1 themselves.

2 See, CACI 1304.

3 **(f) Key Evidence in Support of Affirmative Defense 2**

4 Defendants' evidence in support of their affirmative defense includes:

- 5 • Testimony by Officer and Deputy Defendants
- 6 • Testimony by Civilian Witnesses
- 7 • Evidence gathered including audio, videos, Puga's gun, Puga's fired
- 8 cartridge casing, photographs, scene and defendant processing,
- 9 Puga's criminal records, autopsy materials and toxicology.
- 10 • Testimony by experts and non-retained experts, expert reports, and
- 11 expert materials.
- 12 • Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

13 **(d) Affirmative Defense 3: Comparative fault/Contributory negligence of**

14 Decedent and/or State Defendants against the state law negligence, battery, and

15 Bane Act claims.

16 **(e) Elements Required for Affirmative Defense 3**

17 The elements of comparative fault are:

- 18 1. Decedent and/or State Defendants were negligent; and
- 19 2. Decedent's and/or State Defendants' negligence was a

20 substantial factor in causing Decedent's death.

21 See, CACI 406 and 407.

22 **(f) Key Evidence in Support of Affirmative Defense 3**

23 Defendants' evidence in support of their affirmative defense includes:

- 24 • Testimony by Officer and Deputy Defendants
- 25 • Testimony by Civilian Witnesses
- 26 • Evidence gathered including audio, videos, Puga's gun, Puga's fired
- 27 cartridge casing, photographs, scene and defendant processing,
- 28

Puga's criminal records, autopsy materials and toxicology.

- Testimony by experts and non-retained experts, expert reports, and expert materials.
- Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

**(d) Affirmative Defense 4:** Plaintiffs' claim for negligence is barred by Superseding Cause, CACI 432.

**(e) Elements Required for Affirmative Defense 4**

The elements of comparative fault are:

1. That Decedent and/or State Defendants' conduct occurred after the conduct of Defendant;
2. That a reasonable person would consider Decedent and/or State Defendants' conduct a highly unusual or an extraordinary response to the situation;
3. That Decedent and/or State Defendants' did not know and had no reason to expect that Decedent and/or State Defendants' would act in a negligent manner; and
4. That the kind of harm resulting from Decedent's and/or State Defendants' conduct was different from the kind of harm that could have been reasonably expected from Defendant's conduct

See, CACI 432

**(f) Key Evidence in Support of Affirmative Defense 4**

Defendants' evidence in support of their affirmative defense includes:

- Testimony by Officer and Deputy Defendants
- Testimony by Civilian Witnesses
- Evidence gathered including audio, videos, Puga's gun, Puga's fired cartridge casing, photographs, scene and defendant processing, Puga's criminal records, autopsy materials and toxicology.
- Testimony by experts and non-retained experts, expert reports, and

1 expert materials.

2 • Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

3 **(d) Affirmative Defense 5:** Defendants Vaccari and Adams are not  
4 responsible for Hector Puga's harm because of the later criminal and/or intentional  
5 conduct of Hector Puga.

6 **(e) Elements Required for Affirmative Defense 5**

7 Individual Defendants are not responsible for Hector Puga's harm if  
8 Defendants prove the following:

- 9 1. That Hector Puga committed an intentional or a criminal act;  
10 2. That Hector Puga's intentional or criminal conduct happened after  
11 the conduct of Defendants; and  
12 3. That Defendants did not know and could not have reasonably  
13 foreseen that another person would be likely to take advantage of the situation created  
14 by Defendant's conduct to commit this type of act.

15 See, CACI 433

16 **(f) Key Evidence in Support of Affirmative Defense 5**

17 Defendants' evidence in support of their affirmative defense includes:

- 18 • Testimony by Officer and Deputy Defendants  
19 • Testimony by Civilian Witnesses  
20 • Evidence gathered including audio, videos, Puga's gun, Puga's fired  
21 cartridge casing, photographs, scene and defendant processing,  
22 Puga's criminal records, autopsy materials and toxicology.  
23 • Testimony by experts and non-retained experts, expert reports, and  
24 expert materials.  
25 • Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

26 **(d) Affirmative Defense 6:** Immunity under California Government Code  
27 § 820.2.  
28

1           **(e) Elements Required for Affirmative Defense 6**

2           Immunity under California Government Code § 820.2. The elements  
3 for this affirmative defense are:

- 4           1.     The Defendants exercised discretion in stopping, pursuing,  
5 and/or using force on Decedent;  
6           2.     The discretion was vested in the defendant officers pursuant to  
7 their duties as a peace officers.

8           **(f) Key Evidence in Support of Affirmative Defense 6**

9           Defendants' evidence in support of their affirmative defense includes:

- 10           • Testimony by Officer and Deputy Defendants  
11           • Testimony by Civilian Witnesses  
12           • Evidence gathered including audio, videos, Puga's gun, Puga's fired  
13 cartridge casing, photographs, scene and defendant processing,  
14 Puga's criminal records, autopsy materials and toxicology.  
15           • Testimony by experts and non-retained experts, expert reports, and  
16 expert materials.  
17           • Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

18           **(d) Affirmative Defense 7: Immunity under California Government Code**

19 § 820.2.

20           **(e) Elements Required for Affirmative Defense 7**

21           Immunity under California Government Code § 820.2. The elements  
22 for this affirmative defense are:

- 23           1.     The Defendants exercised discretion in stopping, pursuing,  
24 and/or using force on Decedent;  
25           2.     The discretion was vested in the defendant officers pursuant to  
26 their duties as a peace officers.

27 ///

**(f) Key Evidence in Support of Affirmative Defense 7**

Defendants' evidence in support of their affirmative defense includes:

- Testimony by Officer and Deputy Defendants
- Testimony by Civilian Witnesses
- Evidence gathered including audio, videos, Puga's gun, Puga's fired cartridge casing, photographs, scene and defendant processing, Puga's criminal records, autopsy materials and toxicology.
- Testimony by experts and non-retained experts, expert reports, and expert materials.
- Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

**(d) Affirmative Defense 8: Immunity under California Government Code § 820.4.**

**(e) Elements Required for Affirmative Defense 8**

Immunity under California Government Code § 820.4. The elements for this affirmative defense are:

1. The Defendants were exercising due care;
2. The Defendants were enforcing the law.

**(f) Key Evidence in Support of Affirmative Defense 8**

Defendants' evidence in support of their affirmative defense includes:

- Testimony by Officer and Deputy Defendants
- Testimony by Civilian Witnesses
- Evidence gathered including audio, videos, Puga's gun, Puga's fired cartridge casing, photographs, scene and defendant processing, Puga's criminal records, autopsy materials and toxicology.
- Testimony by experts and non-retained experts, expert reports, and expert materials.
- Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

1           **(d) Affirmative Defense 9:** Immunity under California Penal Code §§ 835,  
2 835a.

3           **(e) Elements Required for Affirmative Defense 9**  
4           Immunity under California Penal Code §§ 835, 835a. The elements for  
5 this affirmative defense are:

6                   1. Defendants Vaccari and Adams had reasonable cause to believe  
7 Decedent committed a public offense;

8                   2. The force used was reasonable to effect an arrest and/or  
9 overcome Decedent's resistance, and in protection for the life and safety of the  
10 Defendants and others;

11                  3. Decedent was subject to the restraint/force reasonable to  
12 overcome his resistance and in protection of the life and safety of the Defendants  
13 and others.

14           **(f) Key Evidence in Support of Affirmative Defense 9**  
15           Defendants' evidence in support of their affirmative defense includes:

- 16                   • Testimony by Officer and Deputy Defendants  
17                   • Testimony by Civilian Witnesses  
18                   • Evidence gathered including audio, videos, Puga's gun, Puga's fired  
19                   cartridge casing, photographs, scene and defendant processing,  
20                   Puga's criminal records, autopsy materials and toxicology.  
21                   • Testimony by experts and non-retained experts, expert reports, and  
22                   expert materials.  
23                   • Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

24           **(d) Affirmative Defense 10:** Immunity under California Government Code  
25 § 820.8.

26 ///

27 ///

28

**(e) Elements Required for Affirmative Defense 10**

The elements for this affirmative defense are:

1. Defendants Vaccari and Adams are not liable for any injury caused by the act or omission of another person, including but not limited to Decedent.

**(f) Key Evidence in Support of Affirmative Defense 10**

Defendants' evidence in support of their affirmative defense includes:

- Testimony by Officer and Deputy Defendants
- Testimony by Civilian Witnesses
- Evidence gathered including audio, videos, Puga's gun, Puga's fired cartridge casing, photographs, scene and defendant processing, Puga's criminal records, autopsy materials and toxicology.
- Testimony by experts and non-retained experts, expert reports, and expert materials.
- Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

**(d) Affirmative Defense 11: Immunity under California Government Code**

§ 845.8(b)(3).

**(e) Elements Required for Affirmative Defense 11**

The elements for this affirmative defense are:

1. Decedent was resisting arrest at the time he was injured.

**(f) Key Evidence in Support of Affirmative Defense 11**

Defendants' evidence in support of their affirmative defense includes:

- Testimony by Officer and Deputy Defendants
- Testimony by Civilian Witnesses
- Evidence gathered including audio, videos, Puga's gun, Puga's fired cartridge casing, photographs, scene and defendant processing, Puga's criminal records, autopsy materials and toxicology.

- Testimony by experts and non-retained experts, expert reports, and expert materials.
- Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

**(d) Affirmative Defense 12:** Immunity under California Penal Code § 196(b).

**(e) Elements Required for Affirmative Defense 12**

The individual Defendants are not liable for the death of Decedent so long as:

1. Defendants Vaccari and Adams had reasonable cause to believe Decedent committed a public offense;
2. The force used was reasonable to effect an arrest and/or overcome Decedent's resistance and in protection for the life and safety of the individual Defendants and others; and
3. Decedent was subject to the restraint reasonable to overcome his resistance and in protection of the life and safety of the individual Defendants and others.

**(f) Key Evidence in Support of Affirmative Defense 12**

Defendants' evidence in support of their affirmative defense includes:

- Testimony by Officer and Deputy Defendants
- Testimony by Civilian Witnesses
- Evidence gathered including audio, videos, Puga's gun, Puga's fired cartridge casing, photographs, scene and defendant processing, Puga's criminal records, autopsy materials and toxicology.
- Testimony by experts and non-retained experts, expert reports, and expert materials.
- Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

**(d) Affirmative Defense 13:** Immunity under California Government Code

1 § 815.2(b).

2 (e) **Elements Required for Affirmative Defense 13**

3 The elements of this affirmative defense are:

4 1. If Defendants Vaccari and Adams are immune from liability on  
5 Plaintiffs' state law claims, then their corresponding employer, Defendant County,  
6 is also immune.

7 (f) **Key Evidence in Support of Affirmative Defense 13**

8 Defendants' evidence in support of their affirmative defense includes:

- 9 • Testimony by Officer and Deputy Defendants  
10 • Testimony by Civilian Witnesses  
11 • Evidence gathered including audio, videos, Puga's gun, Puga's fired  
12 cartridge casing, photographs, scene and defendant processing,  
13 Puga's criminal records, autopsy materials and toxicology.  
14 • Testimony by experts and non-retained experts, expert reports, and  
15 expert materials.  
16 • Testimony by Plaintiffs, Puga's sisters, and minor Plaintiffs' GALs.

17 (g) **Third Parties**

18 There are no third parties asserting claims or defenses in this matter.

19 (h) **Evidentiary Issues**

20 Defendants have filed and/or joined in the following Motions in Limine:

- 21 1. **Motion in Limine No. 1** to exclude portions of the testimony of  
22 Plaintiffs' Expert Matthew Kimmins and to exclude his videos. (Dkts. #132-133);  
23 2. **Motion in Limine No. 2** to exclude testimony, evidence,  
24 argument regarding portions of Roger Clark's opinions. (Dkts. #129-129.8);  
25 3. **Motion in Limine No. 3** to exclude evidence and testimony  
26 concerning shooting and injuries of third parties during the subject incident. (Dkts.  
27 #140-140.2);  
28

1                   4.     **Motion in Limine No. 4** to exclude “Sal’s” unauthenticated  
2 black and white video. (Dkts. #130-130.6);

3                   5.     **Motion in Limine No. 5** to limit the testimony of medical  
4 examiner Timothy Jong, M.D. (Dkts. #141-141.3 and 145)

5                   6.     **Motion in Limine No. 6** to exclude lay witness’ opinion as to  
6 Hector Puga’s state of mind. (Dkts. #126-126.4) and corresponding Ex Parte  
7 application to allow this sixth Motion in Limine. (Dkts. #127-127.8)

8           (i)     **Issues of Law**

9           If Defendants’ pending Motion for Summary Judgment is not successful,  
10 Defendants plan to raise the defense of qualified immunity by Rule 50 motion. If  
11 raised after the close of evidence, the qualified immunity defense may require  
12 special interrogatories. “In a proper case, the use of special jury interrogatories  
13 going to the qualified immunity defense is not discretionary with the court.”  
14 Johnson v. Breeden, 280 F.3d 1308, 1318 (11th Cir. 2002). “Because a public  
15 official who is put to trial is entitled to have the true facts underlying his qualified  
16 immunity defense decided, a timely request for jury interrogatories directed toward  
17 such factual issues should be granted.” Id.; see also Lampkins v. Thompson, 337  
18 F.3d 1009, 1014 (8th Cir. 2003) (holding district court properly allowed special  
19 interrogatories relating to facts underpinning qualified immunity defense);  
20 Stephenson v. Doe, 332 F.3d 68, 81 (2d Cir. 2003) (“We believe that use of special  
21 interrogatories in this case resolves the difficulty of requiring the jury to decide  
22 ‘what the facts were that the officer faced or perceived’ and requiring the court to  
23 make the ultimate legal determination of whether qualified immunity attaches on  
24 those facts.”).

25           At the time Deputies Vacari and Adams acted, there was no factually  
26 analogous case telling them that Decedent could not be stopped, apprehended, and  
27 later shot for his ultimately life-threatening conduct. No “clearly established” case  
28

1 required Deputy Vaccari and Adams to allow Decedent to further threaten them or  
2 others, any longer than he actually did. There is not a robust consensus of cases of  
3 persuasive authority on this issue, either. To the contrary, as set forth above,  
4 deputies are on notice that they are permitted to use deadly force when there is  
5 probable cause to believe there is an immediate threat of serious bodily injury or  
6 death, which was the case here.

## 7 **II. BIFURCATION OF ISSUES (L.R. 16-4.3)**

### 8 **Punitive Damages**

9 Plaintiffs have requested punitive damages in this case. Federal Rule of Civil  
10 Procedure 42(b) allows the court to bifurcate a trial for purposes of convenience, to  
11 avoid prejudice, and/or to expedite trial. Further, Rule 42(b) “confers broad  
12 discretion upon the district court to bifurcate at trial, thereby deferring costly and  
13 possibly unnecessary proceedings.” Hangarter v. Provident Life and Acc. Ins. Co.,  
14 373 F.3d 998, 1021 (9th Cir. 2004). Bifurcation of punitive damages issues is  
15 appropriate here.

16 Although Defendants Vaccari and Adam’s respective net worth is relevant to  
17 the issue of punitive damages, it would prejudice the Defendants if Plaintiffs were  
18 permitted to litigate their financial condition during the trial on the issue of liability  
19 and compensatory damages. Recognizing the prejudice to Defendants, one court  
20 has stated:

21  
22 The preferred method of accommodating the various interests is to  
23 delay trial as to the amount of award of punitive damages until the  
24 usual issues of liability and compensatory damages have been tried,  
25 along with the matter of whether the defendants’ conduct warrants any  
26 award of punitive damages at all. If the jury finds in favor of the  
27 claimant on all of these issues, the parties should then be allowed to  
28 present evidence with respect to the amount of the punitive damage  
award.

1 Smith v. Lightening Bolt Production, Inc., 861 F.2d 363, 374 (2nd Cir. 1988).

2 In short, evidence of the Defendants’ net worth should be precluded until and  
3 unless the jury finds that punitive damages should be assessed against them (or  
4 either of them). 999 v. C.I.T. Corp., 776 F.2d 866, 872 (9th Cir. 1985) (holding that  
5 presentation to the jury of evidence of defendant’s net worth was “distracting and  
6 prejudicial” unless there was a showing on the predicate facts for an award of  
7 punitive damages, and noting that where such evidence is improperly introduced, it  
8 necessitates reversal and remand for a new determination of compensatory damages  
9 “untainted by the net worth evidence”).

10 Separating any portion of trial directed toward an amount of punitive damages  
11 to be awarded against Defendants Vaccari and Adams, if any, facilitates an orderly  
12 procession of trial, and spares the Defendants of the needless embarrassment of  
13 having their net worth aired in a public setting—particularly where the jury may  
14 find that no such award is appropriate after hearing the evidence in Plaintiffs’ case-  
15 in-chief. See, Smith, supra, 861 F.2d at 374 (2nd Cir. 1988); see also, Geddes v.  
16 United Financial Group, 559 F.2d 557, 560 (9th Cir. 1977) (“It has been widely  
17 held...that the financial standing of the defendant is inadmissible as evidence in  
18 determining the amount of compensatory damages to be awarded.”); Marvin  
19 Johnson, P.C. v. Shoen, 888 F.Supp. 1009, 1013 (D. Ariz. 1995) (“The financial  
20 standing of a defendant is ordinarily inadmissible as evidence in determining the  
21 amount of compensatory damages to be awarded”).

22 Finally, permitting Plaintiffs to raise evidence regarding the individual  
23 Defendants’ financial circumstances prior to proving the issue of liability and  
24 compensatory damages may waste time and confuse the jury. See, Estate of Nunez  
25 by and through Nunez v. County of San Diego, 2019 WL 2238655, at \*5 (S.D. Cal.  
26 2019) (“Here, the Court is persuaded that the financial information raised by  
27 Defendant Naranjo is likely to take up at least some time and could lead to jury  
28

1 confusion. Thus, the motion to bifurcate trial as to separate liability  
2 and punitive damages phases is GRANTED.”). Thus evidence of, or examination  
3 regarding, Defendants Israel and Duran’s financial circumstances should be properly  
4 excluded at trial unless and until the jury finds that punitive damages should be  
5 assessed against them (or either of them). See, Fed. R. Civ. Proc. 42(b).

6 **III. JURY TRIAL (L.R. 16-4.4)**

7 A jury trial has been timely requested by Defendants.

8 **IV. ATTORNEYS’ FEES (L.R. 16-4.5)**

9 Attorneys’ fees are requested by Defendants pursuant to 42 U.S.C. § 1988.

10 **V. ABANDONMENT OF ISSUES (L.R. 16-4.6)**

11 Defendants have not abandoned any affirmative defenses.  
12

13 DATED: April 24, 2025

**LYNBERG & WATKINS**  
A Professional Corporation

14  
15  
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